

U.S. DISTRICT &
BANKRUPTCY COURTS

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Attorneys for Defendant Micron Electronics, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.
HINCKLEY, JACQUELINE T.
HLADUN, MARILYN J. CRAIG,
JEFFERY P. CLEVINGER, and
TIMOTHY C. KAUFMANN, individually
and on behalf of those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a
Minnesota corporation,

Defendant.

Case No. CJV 01-0244-S-BLW

**DEFENDANT MICRON ELECTRONICS,
INC.'S MEMORANDUM IN SUPPORT
OF MOTION FOR PROTECTIVE
ORDER OR, IN THE ALTERNATIVE,
MOTION FOR EXTENSION OF TIME
TO RESPOND TO PLAINTIFFS' SIXTH
SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS**

ORIGINAL

**DEFENDANT MICRON ELECTRONICS, INC.'S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR
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FOR PRODUCTION OF DOCUMENTS - 1**

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Defendant Micron Electronics, Inc. ("MEI" or "Defendant"), by and through its counsel of record, hereby files this Memorandum in support of its motion for a protective order pursuant to Federal Rule of Civil Procedure 26(c).

I. INTRODUCTION

Defendant seeks a protective order requiring Plaintiffs to withdraw their untimely Sixth Set of Requests for Production of Documents and prohibiting Plaintiffs from serving any additional written discovery until after the Court's resolution of the issue of final class certification (to be heard on November 16, 2004 (Docket No. 216)). Or, in the alternative, that the Court allow Defendant a thirty (30) day extension of time to respond to Plaintiffs' Sixth Set of Requests for Production of Documents.

Although not required by District of Idaho Local Civil Rule 37.1, Defendant nonetheless certifies that it has made a good faith effort to confer with opposing counsel on the matters raised in this motion, but has been unable to reach agreement.

II. PROCEDURAL HISTORY

According to the Court's May 23, 2003 Scheduling Order (Docket No. 166), the deadline for completion of "[a]ll fact discovery, and all expert concerning the class certification issues only" was May 3, 2004. As the Court's Scheduling Order states, this deadline is "for the completion of all discovery . . . not a deadline for discovery requests. Discovery requests must be made far enough in advance . . . to allow completion of the discovery by the deadline dates." (Scheduling Order at ¶ 6.) (Emphasis in original.)

Therefore, the last day for the parties to serve discovery requests via mail was March 30,

2004 and the last day for the parties to serve discovery requests via hand delivery was April 2, 2004.

Plaintiffs served their "Sixth Set of Requests for Production of Documents" via hand delivery on July 7, 2004. The discovery included five hundred and forty-five (545) requests for production of documents. (Affidavit of Gregory C. Tollefson in Support of Defendant's Motion for Protective Order, at Ex. A).

After reviewing the discovery requests, on July 20, 2004, Defendant sent a letter to the Plaintiffs, informing counsel that the deadline for completion of discovery had long since passed. (Tollefson Aff., at Ex. B).

On July 22, 2004, Plaintiffs responded, indicating Plaintiffs' Sixth Set of Requests for Production of Documents does not deal with certification issues but damages information, which Plaintiffs need in order to adhere to the deadline for disclosure of experts. (*Id.*, at Ex. C).

On July 29, 2004, Defendant set forth their position that there is no foundation for discovery related to non-class certification issues and that Defendant would agree to allow Plaintiffs to move out their deadline for expert disclosures. (*Id.*, at Ex. D).

On August 2, 2004, Plaintiffs replied, disagreeing with Defendant's suggestion that Plaintiffs move out their deadline for expert disclosures and insisting Defendant produce the documents as soon as possible. (*Id.*, at Ex. E).

On the afternoon of August 6, 2004, Defendant's counsel attempted to reach Plaintiffs' counsel to discuss these issues further, but were not able to locate or speak with Plaintiffs' counsel.

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III. ARGUMENT

Good cause, as required by Federal Rule of Civil Procedure 26(c), exists for issuance of a protective order. As set forth in Defendant's correspondence (Tollefson Aff., Exs. B, D), the deadline for discovery at this stage of the litigation has long since passed. There would have been no reason for the Court to set a discovery deadline if the deadline was meaningless and Plaintiffs could just ignore the deadline and serve discovery whenever they choose, irrespective of the Court's order. If Plaintiffs wished to serve the instant set of discovery, they should have timely served it within the Court's clear deadlines. There was over a full calendar year from when the Court entered its Scheduling Order and when it set the discovery cut-off. There is no stated reason in the record for Plaintiffs' inordinate delay in serving the 545 requests for production of documents.

Plaintiffs have further claimed that their Sixth Set of Requests for Production of Documents does not deal with class certification issues. (Tollefson Aff., Ex. C).¹ The hearing on final class certification is set for November 16, 2004 (Docket No. 216), and the Court's ruling after the hearing will determine whether or not this case continues in litigation as a collective action or otherwise. There is no foundation for discovery related to non-class certification issues, particularly because if the case does not move forward after the certification hearing, all of the effort in responding to the voluminous discovery requests will have been for naught. If

¹ While Plaintiffs assert that their 545 Requests for Production do "not deal with certification issues, but rather, *deals with damages*" (Tollefson Aff., Ex. C, emphasis added), this claim is not supported by the Requests themselves. The Requests seek such documentation as personnel files, scanning records, e-mails, instant messages, etc. (Tollefson Aff., Ex. A). Plaintiffs do not explain how such documents would "deal[] with damages."

Plaintiffs wish to engage in this sort of discovery prior to the final certification hearing, they should have timely served such discovery before the May, 2004 discovery cut-off.

Additionally, as a professional courtesy, Defendant has indicated that it will agree to stipulate to Plaintiffs moving out their deadline for expert disclosures.

Finally, in the alternative, should the Court decline to grant Defendant's Motion for Protective Order, Defendant would respectfully request an additional thirty (30) days from the Court's decision within which to respond to the 545 requests for production of documents.

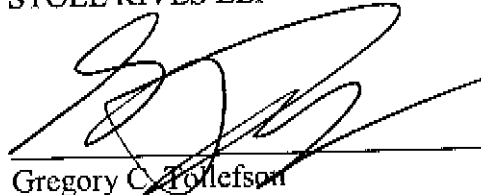
IV. CONCLUSION

For the reasons stated herein, and as supported by Defendant's concurrently-filed Affidavit and the record in this case, Defendant respectfully requests that the Court grant a protective order requiring Plaintiffs to withdraw their untimely Sixth Set of Requests for Production of Documents and prohibiting Plaintiffs from serving any additional written discovery until after the Court's resolution of the issue of final class certification.

In the alternative, should the Court deny Defendant's Motion, Defendant respectfully seeks an order granting Defendant a thirty (30) day extension of time from the date of the denial to respond to Plaintiffs' Sixth Set of Requests for Production of Documents.

Dated this 6th day of August, 2004.

STOEL RIVES LLP



Gregory C. Tollefson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of August, 2004, I caused to be served a true copy of the foregoing **DEFENDANT MICRON ELECTRONICS, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** by the method indicated below, addressed to the following:

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☒ Via U. S. Mail
☐ Via Hand-Delivery
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Gregory C. Tolleson

DEFENDANT MICRON ELECTRONICS, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS - 6